1394.

SUPREME COURT OF THE UNITED STATES.

No. 112.

ANDREW WAGGAMAN, JABITHA WAGGAMAN, BENJAMIN H. WAGGAMAN, NATHANIEL LYON, & NOAH LYON, PLAINTIFFS IN ERROR,

vs.

PETER HERR, GARRETT VLIET, JASPAR VLIET, and JOHN VLIET.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

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1334

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

District court of the United States of America, for the district of Wisconsin.

At a special term of the district court of the United States of America, for the district of Wisconsin, begun and held according to law at the city of Milwaukee, on the first Monday of September, in the year of our Lord one thousand eight hundred and fifty-seven—present: the honorable Andrew G. Miller, judge of said court, presiding; Major J. Thomas, marshal; John M. Miller, clerk.

Among other were the following proceedings, to wit:

ANDREW WAGGAMAN, JABITHA WAGGAMAN, BENJAMIN H. WAGGAMAN, NATHANIEL LYON, and NOAH LYON,
vs.
PETER HERR, GARRET VLIET, JASPER VLIET, and JOHN VLIET.

Be it remembered, that heretofore, to wit, on the fourth day of May, in the year of our Lord one thousand eight hundred and fifty-seven, the said Andrew Waggaman, Jabitha Waggaman, Benjamin H. Waggaman, Nathaniel Lyon, and Noah Lyon, by Messrs. Brown & Ogden, their attorneys, filed their declaration in ejectment against Peter Herr, Garret Vleit, Jasper Vliet, and John Vliet, in the words and figures following, to wit:

Declaration.

District court of the United States, for the district of Wisconsin.

District of Wisconsin, ss.

Of the first Monday of May, A. D. 1857, Andrew Waggaman, and Jabitha *Waggam*, and Benjamin H. Waggaman, who are citizens of the State of Illinois, Nathaniel Lyon, who is a citizen of the State of Indiana, and Noah Lyon, who is a citizen of the State of Iowa, plaintiffs in this suit, by Brown & Ogden, their attorneys, complain of Peter Herr, Garret Vleit, Jasper Vleit, and John Vleit, who are citizens of the State of Wisconsin, defendants, pursuant to the statute in such case made and provided:

For that whereas the said plaintiffs heretofore, to wit, on the first day of March, in the year of our Lord one thousand eight

hundred and-fifty-seven, were possessed of certain real estate in the city and county of Milwaukee, State of Wisconsin, to wit, in said district, known and described as five undivided fourteenths of all that part of the east half of the southeast quarter of section eighteen, (18,) in township seven, (7,) north of range twenty-two (22) east, bounded as follows: commencing at a point on the west line of the said east half of the southeast quarter of section eighteen, (18,) eleven hundred and twenty-one (1,121) feet north of the southwest corner thereof; running thence north on the said west line to the northwest corner thereof; running thence east on the north line thereof eight hundred and ninety 34-100 feet, to the road known as the Fond du Lac plank road; thence southerly along the said road two hundred and seventy-four feet; thence west two hundred and fifty-six feet; thence south four hundred and ninety-eight feet; thence east three hundred and five feet to the said plank road; thence southerly along the said plank road eight hundred and five feet; thence west six hundred and eighty-feet; thence north fifty-two and a half feet; and thence west three hundred and sixty feet to beginning, of great value to wit: of the value of five thousand dollars, which said premises the said plaintiffs claim in fee; and they the said plaintiffs being so possessed thereof, the said defendants afterwards, to wit, on the first day of April, in the year of our Lord one thousand eight hundred and fifty-seven, entered into the said premises and ejected the said plaintiffs therefrom, and now unjustly and unlawfully withhold from the said plaintiffs the possession thereof, to the damage of the said plaintiffs of six thousand dollars, and therefore they bring suit, &c.

BROWN & OGDEN, *Pltfs. Atty.*

To PETER HERR, GARRET VLIET, JASPER VLIET, and JOHN VLIET:

You are hereby notified that the declaration, with a copy whereof you are now herewith served, and to which copy this notice is subjoined, will be filed in the office of the clerk of said court, in the city of Milwaukee, on the first Monday of May; that upon filing the same a rule will be entered requiring you to appear and plead to the said declaration within twenty days after the entry of such rule; and that if you neglect so to appear, a judgment by default will be entered against you, and the plaintiffs will recover possession of the premises specified in the said declaration.

Dated this 28th day of April, 1857.

Yours, &c.,

BROWN & OGDEN, *Pltfs. Attys.*

Affidavit of authority to commence suit.

District of Wisconsin, ss.

Thomas L. Ogden, being duly sworn, deposes and says, that he

is one of the firm of Brown & Ogden, who are the attorneys for the plaintiffs named in the within declaration, and that said firm have written authority and directions from said plaintiff to commence an action of ejectment for the premises within described.

THOMAS L. OGDEN.

Subscribed and sworn to before me this 29th day of April, A. D. 1857.

J. M. MILLER,
U. S. Com'r, Dist. of Wis.

Proof of service.

George Cogswell, being duly sworn, deposes and says, that he served the foregoing declaration, notice, and affidavit on the within named defendants, Peter Herr, Garrett Vliet, and Jasper Vliet, by them this original, and delivering each a true copy hereof, on the 30th day of April, A. D. 1857; also served the same in the same manner on the within named John Vliet, this 4th day of May, A. D. 1857.

GEO. COGSWELL.

Subscribed and sworn to before me, this 4th day of May, A. D. 1857.

J. M. MILLER,
U. S. Com'r, Dist. of Wis.

And afterwards, to wit, on the first Monday (being the fourth day) of May, A. D. 1857, and a rule day of said court, came the said plaintiffs, by their said attorneys, and entered in the order and rule book a rule on the defendants to plead, as follows:

Rule to plead.

ANDREW WAGGAMAN, JABITHA WAGGAMAN, BENJAMIN H. WAGGAMAN, NATHANIEL LYON, and NOAH LYON,	1st Monday of May, 1857.
vs.	
PETER HERR, GARRET VLIET, JASPER VLIET, and JOHN VLIET.	In ejectment.

On filing the declaration in this cause, and on motion of Brown & Ogden, attorneys for the plaintiffs, that the defendants appear and plead to the said declaration within twenty days after the entry of this rule, and in case of neglect so to appear and plead, a judgment shall be entered by default, and the plaintiffs recover possession of the premises specified in the declaration.

BROWN & OGDEN,
Attys. for Piffs.

Plea.

And afterwards, to wit, on the sixteenth day of May, A. D. 1857, came the defendants, by their attorneys, Messrs. Finches, Lynde, and Miller, and filed their plea, as follows:

U. S. district court, district of Wisconsin.

PETER HERR, GARRET VLIET, JASPER VLIET, and JOHN VLIET,
ads.
ANDREW WAGGAMAN, JABITHA WAGGAMAN, BENJAMIN H. WAGGAMAN, NATHANIEL LYON, and NOAH LYON.

And now come the said defendants by Finches, Lynde, and Miller, their atty's, and say that they are not guilty of unlawfully withholding the premises claimed by the said plaintiffs as alleged in the said declaration of the said plaintiffs, and of this they the said defendants put themselves upon the country, and the said plaintiffs doth the like, &c.

FINCHES, LYNDE, and MILLER,
Plff's. Atty's.

Trial.

And now at this same term, to wit, on the tenth day thereof, to wit, on the seventeenth day of September, A. D. 1857, the following proceedings were had, to wit:

ANDREW WAGGAMAN, JABITHA WAGGAMAN, BENJAMIN H. WAGGAMAN, NATHANIEL LYON, and NOAH LYON,
vs.
PETER HERR, GARRET VLIET, JASPER VLIET, and JOHN VLIET.
} At law.

This day came the parties by their counsel, and the issue herein came on to be tried, whereupon a jury was called to try the same, who came, to wit: Edward Button, William Axtell, Josiah Sherwood, Thomas Keogh, Andrew Mitchell, Joel Wilcox, Joseph C. James, William Merrill, John Everts, Williams Lee, Leonard Kennedy, and John Story, twelve free, honest, and lawful men of the district, who were severally sworn and empannelled by the court, and the trial not being concluded, the same was adjourned until to-morrow morning.

And afterwards, to wit, on the eleventh day of the said term, to wit, on the eighteenth day of September, A. D. 1857, the following other proceedings were had, to wit:

ANDREW WAGGAMAN, JABITHA WAGGAMAN, BENJAMIN H. WAGGAMAN, NATHANIEL LYON, and NOAH LYON,
vs.
PETER HERR, GARRET VLIET, JASPER VLIET, and JOHN VLIET.
} At law.

This day the further trial of the issue herein was resumed, and the said jurors of the jury being charged by the court upon their said oaths respectively, do say that the said defendants are not guilty of unlawfully withholding the premises, as the said plaintiffs have herein declared against them.

Judgment.

And afterwards, to wit, on the twenty-fourth day of the same term, to wit, on the eighth day of October, A. D. 1857, the following other proceedings were had, to wit:

ANDREW WAGGAMAN, JABITHA WAGGAMAN, BENJAMIN H. WAGGAMAN, NATHANIEL LYON, and NOAH LYON,
vs.
PETER HERR, GARRET VLIET, JASPER VLIET, and JOHN VLIET.
} At law.

This day came the defendants, by their counsel, and on their motion it is considered and adjudged by this court now here, that the said plaintiffs take nothing by their said suit, and that the defendants recover of the said plaintiffs the sum of sixty-seven dollars and forty cents, their costs about their said defence in this behalf by them expended, and that they have execution therefor, and came the plaintiffs by their counsel, and filed their bill of exceptions.

Judgment roll signed October 8th, A. D. 1857. Costs $67 40.
J. M. MILLER, *Clerk.*

Judgment roll filed October 8th, A. D. 1857.
J. M. MILLER, *Clerk.*

Which said bill of exceptions is as follows:

Exceptions.

District court of the United States for the district of Wisconsin.

ANDREW WAGGAMAN, JABITHA WAGGAMAN, BENJAMIN H. WAGGAMAN, NATHANIEL LYON, and NOAH LYON,
vs.
PETER HERR, GARRET VLIET, JASPER VLIET, and JOHN VLIET.
}

Be it remembered, that on the trial of this cause in the district court of the United States for the district of Wisconsin, on the nineteenth day of September, A. D. 1857, the said plaintiffs, to maintain the issue on their part, offered in evidence and read to the jury a patent from the United States to Jabez K. Botsford; which said patent was objected to by the defendants and received by the court, and was as follows, to wit:

U. S. to Jabez K. Botsford.

Certificate No. 456.

The United States of America to all to whom these presents shall come, greeting:

Whereas Jabes K. Botsford, assignee of Isaac Hoisington, has deposited in the General Land Office of the United States a certificate of the register of the land office at Green Bay, whereby it appears that full payment has been made by the said Isaac Hoisington, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provisions for the sale of the public lands," for the southeast quarter of section eighteen, in township seven north, of range twenty-two east, in the district of lands subject to sale at Green Bay, Michigan Territory, containing one hundred and sixty acres, according to the official plat of the survey of the said lands, returned to the General Land Office by the surveyor general, which said tract has been purchased by the said Isaac Hoisington. Now, know ye, that the United States of America, in consideration of the premises and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant unto the said Jabes K. Botsford, and to his heirs, the said tract above described: to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging unto the said Jabes K. Botsford, and to his heirs and assigns forever.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the tenth day of August, in the year of our Lord one thousand eight [SEAL.] hundred and thirty-seven, and of the independence of the United States the sixty-second.

By the President:

MARTIN VAN BUREN.

By A. VAN BUREN, *Sec'y.*

JAS. S. WILSON,

Acting Recorder of the General Land Office ad interim.

Recorded vol. 1, page 373, E; recorded June 15th, 1849, at 3¼ o'clock, p. m.

REGISTER'S OFFICE, STATE OF WISCONSIN,
Milwaukee county.

I hereby certify that the foregoing is a true and correct transcript from the records in my office of the foregoing instrument, recorded in volume twenty-seven of deeds, on page 268, and has been by me carefully compared with said records, and that it is the whole thereof. In testimony whereof, I have hereunto set my hand this twenty-first day of April, 1857.

A. BADE,
Register of Deeds, Milwaukee county, Wisc.
By SAMUEL WAEGLE, *Deputy.*

And further for the same purpose the plaintiffs offered in evidence a deed from Jabes K. Botsford to John H. Lyon, to which the defendants objected, for the following reasons, to wit:

1st. That by the face of the deed it appears that the title was in the United States at the date of this deed.

2nd. The grantor in this deed died after the date of the deed, and prior to the date of the patent, and there was no inheritable estate in the grantee.

Whereupon the deed was admitted by the court subject to objections, and was read as follows, to wit:

J. K. Botsford to John H. Lyon.

Deed of warrantee.

This indenture, made the fifth day of October, in the year of our Lord one thousand eight hundred and thirty-five, between J. K. Botsford, of the town of Chicago, and State of Illinois, of the first part, and John H. Lyon, of the town and county of Milwaukee, and Territory of Michigan, of the second part, witnesseth: that the said party of the first part, for and in consideration of the sum of one hundred dollars, to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, hath granted, bargained, sold, remised, released, aliened, and confirmed, and by these presents doth grant, bargain, sell, remise, release, alien, and confirm unto the said party of the second part, and to his heirs and assigns forever, all that certain piece or parcel of land known as the east half of the southeast quarter of section No. eighteen, in township No. seven, north range No. twenty-two east, and containing eighty acres, together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, is-

sues, and profits thereof, and all the estate, right, title, interest, claim or demand whatsoever of the said party of the first part, either in law or equity, of, in and to the above bargained premises, with the same hereditaments and appurtenances: to have and to hold the said premises as above described, with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever; and the said party of the first part, for his heirs, executors, and administrators, doth covenant, grant, bargain and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivering of these presents, he was well seized of the premises above conveyed, as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law, in fee simple; and that the above bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, will forever warrant and defend.

In witness whereof, the said party of the first part hath hereunto set his hand and seal the day and year first above written.

J. K. BOTSFORD.

Sealed and delivered in the presence of—
ALBERT FOWLER,
BYRON KILBOURN.

Personally appeared before me, the undersigned justice of the peace, the within named J. K. Botsford, and acknowledged *the* he executed the within deed for the express purposes and conditions therein contained and expressed.

Milwaukee, Oct. 6th, 1835.

ALBERT FOWLER,
Justice of the Peace.

Recorded June 29th, 1836, at 4 o'clock p. m.

REGISTER'S OFFICE, STATE OF WISCONSIN,
Milwaukee county.

I hereby certify that the foregoing is a true and correct transcript from the records in my office of the foregoing instrument, recorded in vol. B of deeds, on page 1, and has been by me carefully compared with said records, and that it is the whole thereof.

In testimony whereof, I have hereunto set my hand this sixteenth day of April, A. D. 1857.

A. BADE,
Register of Deeds, Milwaukee county, Wisc.
By SAMUEL WAIGLE, *Deputy.*

And further to maintain said issue said plaintiffs called Massah

Loomer, who testified as follows: I had a brother by the name of John H. Lyon; he died, I believe, in the year 1836; his father was living at the time; his own mother was not living; his father's name was Jotham. This bible (which said witness then had before her) contains the record of my father's family; this is his family bible; the children were Jabitha, (that is, Jabitha Waggaman,) Isaac, Peter, Elizabeth, Nathaniel, Massah, (that means me,) and Noah; these were living when John died; Joanna died previously to John's death, and after his mother's death; my father and mother (as it appears) were married in 1806; my mother died about the year 1827; Joanna about the year 1829; John's name is also in the record. The mother's name was Elizabeth, and the children (including John) above named are hers.

The record contained in said bible (corresponding in description of the family with that given by the witness) was then read. John was not married and left no children.

It was admitted that Massah Lyon was the wife of Stephen Loomer.

A quit claim deed from Stephen Loomer, and Massah, his wife, to Benjamin F. Waggaman, conveying their interest in estate of said John H., dated November 25th, 1856, was then read in evidence, subject to objections.

A deed from Peter Lyon and Noah Lyon, dated the 16th day of June, A. D. 1856, conveying all the interest of the said Peter in the premises in dispute, was also read in evidence.

And further to maintain the issue, said plaintiffs called as a witness Increase A. Lapham, who testified that he personally knew Garret Vliet and the premises in dispute; and the said Vliet for a great many years, I think as far back as 1836, has claimed said premises as his, and used the same as a part of his farm; he could not say that the premises were fenced prior to 1840 or not; Vliet fenced it.

The plaintiffs further called as a witness Frederick Schumacker, who testified that Peter Herr is now and for the past three years has been in occupation of the premises in dispute, amounting to about thirty-two and 32-100 acres.

It was here agreed by the parties that Herr occupied as the tenant of Garret Vliet, who claims title to the entire premises in dispute; also that Jotham Lyon, the father, died about 13 years before this date, to wit, in the year 1844.

The plaintiffs having rested, the defendants, to maintain the issue on their side, called Mason C. Darling, who, being duly sworn, deposed and said, as follows: I reside in Jefferson county; in 1836 I resided in Milwaukee; I came here in 1835; I knew the Lyon that was drowned; I knew Jothan Lyon, his father; John was drowned in the month of May, 1836; Jothan Lyon, the father, came here in June afterwards; he remained here that

summer, and left her, in the winter of 1837 and '38; I heard Jotham Lyon claimed 80 acres of land near Milwaukee; I do not know of his cutting timber on the land; I was coroner, and held an inquest on the body of John H. Lyon.

And the said defendants further called William W. Burdick, who testified as follows: I knew John H. Lyon; he was drowned in the forepart of May, 1836; an uncle of mine was drowned at the same time; I knew Jotham Lyon, the father; he came to Milwaukee in June afterwards; he came to our house soon after he arrived in Milwaukee; he said that he claimed the land, and came here for the purpose of selling it; I knew he built a house on the west side of Milwaukee river; not on this land, near where Jasper Vliet lives; I don't know where he got the timber; he drew it from the direction of where the land lies; in 1836, when Jotham Lyon was here, the land was timber land, not fenced, nor cultivated, nor improved.

And further to maintain the issue, the defendants called Abraham Vliet, who testified as follows: My father made improvements on the land; I don't know whether he built the house occupied by Herr or not.

It is conceded that the taxes on the land since 1839, have been paid and redeemed by Garret Vliet.

And further to maintain the issue on their part, the defendants read in evidence a deed from Jotham Lyon, and Mary, his wife, to Garret Vliet, as follows:

Jotham Lyon and wife to Garret Vliet.

Warrantee deed.

This indenture, made this thirtieth day of November, in the year of our Lord one thousand eight hundred and thirty-eight, between Jonathan Lyon, and Mary, his wife, of Vermillion county, in the State of Illinois, parties of the first part, and Garret Vliet, of town and county of Milwaukee, in the Territory of Wisconsin, party of the second part, witnesseth: that the said parties of the first part, for and in consideration of six hundred and forty dollars, current money to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released, aliened, and confirmed, and by these presents do grant, *bargan*, sell, remise, release, alien, and confirm unto the said party of the second part, and to his heirs and assigns forever, all that certain piece or parcel of land known as the east half of the southeast quarter of section number eighteen, in township number seven, north of range number twenty-two east, in the said Territory of Wisconsin, containing eight acres of land, and being the same premises conveyed to John H. Lyon, deceased, by J. K. Botsford, of Chicago,

in the State of Illinois, by deed bearing date the fifth day of October, eighteen hundred and thirty-five, together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder or remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, dower and right of dower, claim or demand whatsoever of the said parties of the first part, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances: to have and to hold the said premises as above described, with the appurtenances, unto the said party of the second part, and his heirs and assigns, to his and their sole and only proper use, benefit, and behoof forever; and the said Jonathan Lyon, for himself, his heirs, executors, and administrators, does covenant, grant, bargain, and agree to and with the said party of the second part, and his heirs and assigns, that at the time of the ensealing and delivering these presents, he was well seized of the premises above conveyed, as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law, in fee simple, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form as aforesaid, and that the same are free and clear of all incumbrances of what kind and nature soever; and that the above bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, he will forever warrant and defend.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the year and day first above written.

JOTHAM LYON, [SEAL.]
MARY LYON. [SEAL.]

Sealed and delivered in the presence of—
CHS. M. FOWLER,
D. C. HILL,
WM. N. GARDNER,
F. N. GALGAN.

WISCONSIN TERRITORY,
Milwaukee county, ss.

On this thirtieth day of November, one thousand eight hundred and thirty-eight, before me came the within named grantor, Jonathan Lyon, to me known, and acknowledged that he executed the within deed for the uses and purposes therein mentioned.

WM. N. GARDNER,
Notary Public.

STATE OF ILLINOIS,
Vermillion county, ss.

On this tenth day of January, eighteen hundred and thirty-nine, before me, an acting justice of the peace in and for said county, came *came* the within named grantor, Mary Lyon, to me known, and, being separate and apart from her husband, acknowledged that she executed the within deed freely, without any fear or compulsion of her said husband.

Given under my hand and seal this 10th day of January, A. D. 1839.

DANIEL C. HILL, *J. P.* [SEAL.]

STATE OF ILLINOIS,
Vermillion county, ss.

I, Amos Williams, clerk of the county commissioner court for said county, do hereby certify that Daniel C. Hill, esquire, whose name appears to the annexed certificate, was on the day of the date thereof an acting justice of the peace in and for the county aforesaid, duly commissioned and qualified, as appears to me of record in my office, and that as such full faith and credit are due to all his official acts.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Danville, this 19th day of February, A. D. 1839.

[SEAL.] AMOS WILLIAMS, *Clerk.*

Recorded 2d day of March, A. D. 1839, at 15 minutes before 11 o'clock a m.

REGISTER'S OFFICE, STATE OF WISCONSIN,
Milwaukee county.

I hereby certify that the foregoing is a true and correct transcript from the records in my office of the foregoing instrument, recorded in vol. E of deeds, on pages 511, &c., and has been by me carefully compared with said records, and that it is the whole thereof.

In testimony whereof, I have hereunto set my hand this twenty-first day of April, A. D. 1857.

A. BADE,
Register, Milw. C., Wisc.

Both parties having rested, the plaintiffs requested the court to instruct the jury:

1st. That the patent to J. K. Botsford, and the deed from him to John H. Lyon, are sufficient to show the title of Lyon at the time of his death.

Whereupon the court answered in the negative; which charge

and ruling of the court the plaintiffs except, and pray that the same may be made a part of the record, which is accordingly done.

And the plaintiffs further requested the court to instrust the jury as follows, to wit:

2nd. That upon the death of Lyon in 1836, leaving brothers and sisters, and a father living, but no mother or children, the property descended equally to the father and the children of the mother, deceased.

Whereupon the court charged the jury, that John H. Lyon did not die legally seized of an inheritable estate in the land; to which charge and ruling of the court, and also to the refusal of the court to instruct more specifically upon the subject embraced in the instruction asked, the plaintiffs then and there excepted, and prayed that the same might be made part of the record, which is accordingly done.

And the plaintiffs further requested the court to instruct the jury as follows, to wit:

3d. That the deed from Jotham Lyon to Vliet could carry only the one-half of the estate of his deceased son.

Whereupon the court charged the jury, that John H. Lyon did not die legally seized of an inheritable estate in the land, and the patent to Jabez K. Botsford vested the estate in equity in Garret Vliet, one of the defendants, who holds under Botsford through the deed of Jotham Lyon; to which charge and ruling of the court the plaintiffs then and there excepted, and prayed that the same might be allowed and made part of the record, which is accordingly done.

And this bill is sealed.

A. G. MILLER. [SEAL.]

Bond.

And afterwards, to wit, on the twenty-ninth day of November, A. D. 1857, came the said plaintiffs and filed their bond:

Supreme Court of the United States.

ANDREW WAGGAMAN, JABITHA WAGGAMAN, BENJAMIN H. WAGGAMAN, NATHANIEL LYON, and NOAH LYON,
vs.
PETER HERR, GARRET VLIET, JASPER VLIET, and JOHN VLIET.

Know all men by these presents, that we, Thomas L. Ogden and Hans Crocker, of the city of Milwaukee, State of Wisconsin, are held and firmly bound unto the above named Peter Herr,

Garrett Vliet, Jaspar Vliet, and John Vliet, their executors or administrators, to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this twenty-seventh day of November, A. D. 1857.

Whereas the above named Andrew Waggaman, Jabitha Waggaman, Benjamin H. Waggaman, Nathaniel Lyon, and Noah Lyon have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled suit by the district court of the United States for the district of Wisconsin:

Now, therefore, the condition of this obligation is such, that if the above named Andrew Waggaman, Jabitha Waggaman, Benjamin H. Waggaman, Nathaniel Lyon, and Noah Lyon shall prosecute their said writ of error to effect and answer all costs, if they shall fail to make good their plea, then this obligation to be void, otherwise the same shall remain in full force and virtue.

THOMAS L. OGDEN, [SEAL.]
HANS CROCKER. [SEAL.]

Sealed and delivered in presence of—
JAMES S. BROWN.

Nov. 28, 1857. Bond approved.

A. G. MILLER, *Judge.*

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

I, John M. Miller, clerk of the district court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals now on file and remaining of record in my office, and being a full and complete exemplification of the record and proceedings in the case of Andrew Waggaman, Jabitha Waggaman, Benjamin H. Waggaman, Nathaniel Lyon, and Noah Lyon, against Peter Herr, Garret Vliet, Jasper Vliet, and John Vliet.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of said court, at the city of Milwaukee, in the said district of Wisconsin, this seventh day of [SEAL.] December, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the said United States the eighty-second.

J. M. MILLER, *Clerk.*

United States of America, ss.

The President of the United States of America to the judge of the district court of the United States of America for the [SEAL.] district of Wisconsin, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said district court of the United States of America for the district of Wisconsin, before you, between Andrew Waggaman, Jabitha Waggaman, Benjamin H. Waggaman, Nathaniel Lyon, and Noah Lyon, and Peter Herr, Garret Vliet, and Gasper Vliet, and John Vliet, a manifest error hath happened, to the great damage of the said Andrew Waggaman, Jabitha Waggaman, Benjamin H. Waggaman, Nathaniel Lyon, and Noah Lyon, as by the complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December instant, in the Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this third day of December, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States the eighty-second.

J. M. MILLER, *Clk.*

[SEAL.] The United States of America to Peter Herr, Garrett Vliet, Jasper Vliet, and John Vliet, greeting:

You are hereby cited and admonished to appear at a Supreme Court of the United States, to be held at the city of Washington, on the first Monday of December instant, pursuant to a writ of error in a cause in the district court of the United States of America for the district of Wisconsin, wherein Andrew Waggaman, Jabitha Waggaman, Benjamin H. Waggaman, Nathaniel Lyon, and Noah Lyon are plaintiffs and you are defendants, to show cause, if any there be, why the judgment rendered in the said cause should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this third day of December, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States the eighty-second.

A. G. MILLER,
Judge of the district court of the U. S.
for the district of Wisconsin.